

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Inquiry Concerning the Deployment)	
Of Advanced Telecommunications)	
Capability to All Americans in a)	
Reasonable and Timely Fashion and,)	CC Docket No. 98-146
Possible Steps to Accelerate Such)	
Deployment Pursuant to Section 706)	
of the Telecommunications Act of 1996)	

**THIRD NOTICE OF INQUIRY
REPLY COMMENTS OF
THE ALLIANCE FOR PUBLIC TECHNOLOGY,
THE AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES &
THE AMERICAN COUNCIL OF THE BLIND**

I. Introduction

The Alliance for Public Technology (APT), along with the American Association of People with Disabilities (AAPD) and the American Council of the Blind (ACB), submit the following reply comments in response to issues raised in the many comments filed in the above captioned inquiry. APT is a nonprofit organization comprised of public interest groups and individuals that have been advancing the need for ubiquitous deployment of advanced telecommunications services throughout our nation for more than a decade. AAPD, a national membership organization for people with disabilities and their families, works to bring about "the next step in the evolution of the disability rights movement" - economic clout and power through numbers - unity, leadership and impact. ACB is one of the nation's leading membership organizations of blind and visually impaired people. It was founded in 1961 and strives to improve the well being of all blind and visually impaired people.

Advanced telecommunications services must be deployed to all Americans now. Section 706 gives the Commission the authority to remove barriers and create incentives to accelerate deployment. But in over five years, it has failed to do so. Making millions of Americans wait for advanced services is unacceptable. APT has been explicitly calling for action by the Commission since 1998. Now, there is even greater urgency. With economic uncertainties, widening gaps between information rich and information poor, and no coherent national policy, the underserved communities that APT, AAPD and ACB represent are even more at risk. The Commission must clearly state that deployment is not reasonable and timely and should begin the process of implementing policies to speed deployment of advanced services to all Americans.

APT believes this debate must not focus solely on statistics and clouded debates about obtuse regulations. Rather, it is imperative to acknowledge that advanced services are critical to all Americans and the opportunities for improving quality of life are far more important than the technological platform that provides the services. Advanced telecommunications services have the potential to: bring better and more affordable health care to all citizens; expand educational opportunities for lifelong learning; enable independent living for senior citizens and people with disabilities; create opportunities for jobs and economic advancement, as well as the ability to control one's own finances; make government more responsive to all citizens; and simplify access to communications technology. It is important to devise policies that will get these capabilities into the hands of those who need them, while fostering a fair regulatory environment.

The various interests who responded to this proceeding focus on several topics, including regulation of the advanced telecommunications market, the state of deployment

of advanced telecommunications capabilities and the potential alternatives for encouraging mass deployment of advanced services. APT will endeavor to address these concerns and will focus on the need for the Commission to act, both to fulfill the mandate of Section 706 and to serve those Americans who are currently being left behind in the digital age.

II. Regulation of the Advanced Telecommunications Market

While APT agrees that the Commission has constructed an uneven regulatory structure for this market and these regulations should be modified to reflect a technology neutral philosophy, the argument amongst the various industry players and other consumer groups about how exactly to change the regulations distorts the real purpose of reform. Some commenters seek sweeping change to eliminate asymmetrical regulations; others see no problem with the current regime. These arguments predictably divert along industry specific lines. However, the argument loses meaning when it is restricted to an “us versus them” construction. Real consumers care very little about which technology is available to them; they simply desire the opportunity to access the services.

With the different industries calling for different regulatory structures, the important goal of making these services available to all Americans is lost. The Commission must take immediate steps to bring the debate back to the goal of Section 706. While competition and an open market are important, there are other factors to be addressed. APT has continually said that policies must be implemented that help those Americans that the marketplace leaves behind. Public policy incentives which help marginalized communities must be considered, such as social compacts and demand aggregation, as APT outlined in its 1998 petition to the Commission. The relationship

between community building groups and the market-oriented interests of service providers is critical to establish local demand for advanced services. By developing an base of technology literacy, especially among community leaders, and bringing that knowledge to the community with applications that address basic life needs, partnership arrangements between communities and providers will open new profitable markets for community-driven aggregation of demand.¹

These marginalized communities are often cited as having a lack of demand, which contributes to the slow deployment. One common view about the lack of demand for broadband services is that there is no “killer app” that creates widespread excitement about the technology.² In APT’s view, there are many compelling applications already in practice. They are life-altering, yet these programs are not widely known. One reason for this is the fact that they are not entertainment based, such as the Napster model and movies on demand, which were cited as examples of “killer apps.”³ The applications already in practice, such as telemedicine and real time sign language translation, are “killer apps” for much different, and more important reasons. These applications enhance quality of life. Rural residents can get the medical care they need from urban hospitals and patients with chronic diseases such as diabetes and asthma can monitor their own conditions and reduce the number of acute care medical visits. People who are deaf can live and work much more efficiently by being able to work with an interpreter over a video connection, rather than having to travel. Such a connection also allows the

¹ See Petition of the Alliance for Public Technology Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry And Notice of Proposed Rulemaking to Implement Section 706 of The 1996 Telecommunications Act, February 18, 1998 at III C.

² See Comments of AT&T Corp. In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 15.

interpreters to serve more people. These are just two examples of the real “killer apps.” They mean much more than any movie on demand.

The advanced telecommunications market requires careful attention. It cannot be overly burdened with regulations that impede investment. Yet it cannot be left solely to its own devices, because many Americans will wait unacceptable amounts of time before they have access to advanced services. The Commission must address both sides of the problem. It cannot ignore the fact that some of its current regulations are hindering competition. But it cannot only focus on increasing competition, which in itself is not an end. Section 706 does not merely call for open competition for advanced services. It clearly states that advanced services must be deployed to all Americans. Thus, in speeding deployment of these services, the Commission cannot forget those citizens who would be left behind by a competitive market. APT encourages the Commission to enact both pro-competitive and pro-consumer policies, thereby guaranteeing all Americans access to advanced services.

III. State of Deployment of Advanced Telecommunications Capabilities

Many commenters, such as National Cable and Telecommunications Association (NCTA), have argued that deployment of advanced services is reasonable and timely and “the evidence with regard to the availability of broadband services ‘to all Americans’ is also extremely promising.”⁴ According to Sprint, the Commission’s statistics on the deployment of advanced services, collected from Form 477, “indicate a deployment that

³ Id. at p. 15.

⁴ See Comments of the National Cable and Telecommunications Association, In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 4.

is not just reasonable and timely, but truly impressive.”⁵ These conclusions are not shared by APT, and in fact we believe them to be misleading. Beyond the problems with the Commission’s zip code data that APT and others noted,⁶ there are still huge segments of the population who do not have access to advanced services. Even AT&T acknowledges that “these vulnerable communities. . .may need special attention to overcome economic, geographic or other boundaries.”⁷ The state of Alaska succinctly addresses this situation, “The key problem facing the Commission is that the marketplace is providing services where they are most profitable, not where they are most urgently needed.”⁸

Other commenters have suggested that no data on the deployment of advanced services to underserved communities is necessary and if the market is allowed to develop, these communities will be served when they can offer the necessary demand.⁹ Such a view is exactly the problem. Ignoring sections of the population that the marketplace will

⁵ See Comments of Sprint Corporation, In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 3.

⁶ See Comments of The National Grange Of The Order of Patrons of Husbandry, In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 2. and Comments of the Public Utility Commission of Texas In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 2.

⁷ See Comments of AT&T Corp. In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 9.

⁸ See Comments of the state of Alaska In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 3.

⁹ See Comments of Verizon In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 23.

not serve on its own is dangerous and irresponsible. It has been concluded by the Commission that people with disabilities, low-income, minority, Native Americans and other marginalized communities are at risk of not receiving advanced services in a reasonable and timely fashion.¹⁰ Simply stating that the market will take care of these populations in due time does nothing to serve their current critical needs. As APT has maintained, it is these underserved communities that often have the most life-enhancing opportunities with advanced services. It is not merely about faster Internet connections for these Americans. They can truly change the ways they live, work and learn with new technologies and to suggest they be served when the market is ready for them is insulting.

Another problem with evaluations of the state of deployment concerns the speed of the services in question. DSL was never intended as the end goal for advanced services and Section 706. An evolving definition, encompassing the most advanced technologies and able to incorporate new developments, is vital for continued deployment. Some commenters have said that the true benefits of broadband require faster transmission speeds than the 200 kbps that the Commission is currently using as a benchmark.¹¹ APT agrees with this analysis and recommends that the Commission, when evaluating deployment and seeking ways to increase deployment, focus on the real advanced services and their benefits. Section 706 does not limit the world of advanced services to DSL and cable modems; the Commission should not confine itself either.

The Commission should not concur with the assessments of the state of deployment and should not restrict itself and its policies to the current services. Rather, it

¹⁰ Deployment of Advanced Telecommunications Capability, Second Report, August 2000, FCC 00-290, at p. 6.

¹¹ See Comments of Intel Corporation In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible

should look deeper at the problem, finding new evaluation methods and stating that underserved populations are not merely at risk but in fact are clearly *not* receiving advanced services in a reasonable and timely fashion.

IV. Alternatives for Encouraging Mass Deployment

As mentioned earlier, some commenters believe that the Commission should take no action at this time. This is not a viable alternative and would be an improper course, because it would continue to leave vulnerable the communities who have already been faced with little or no access to advanced services. As APT has suggested, the Commission should adopt a technology neutral philosophy in its regulations, which would remove barriers to investment in all segments of the industry.

Such a philosophy could be articulated in a rulemaking proceeding. APT agrees with Intel Corporation's call for a comprehensive Section 706 rulemaking proceeding by the Commission.¹² APT has requested such a proceeding in a previous petition to the Commission.¹³ Such a proceeding would enable the Commission to thoroughly investigate the problems in deployment of advanced services and consider the many regulatory alternatives. The weight of a rulemaking proceeding would likely draw more parties into the process, which would be of enormous benefit in determining the proper course of action. A rulemaking proceeding would also fulfill the Commission's requirements under Section 706(a), which gives the Commission authority to use such

Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 5.

¹² See Comments of Intel Corporation In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans, in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, September 24, 2001 at p. 1.

¹³ See Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, Docket No. 9244 (February 18, 1998).

tools as price cap regulation, regulatory forbearance and competition-promoting measures to encourage deployment.¹⁴

The time for such a rulemaking proceeding is now. With economic uncertainties, the broadband market is in a very tenuous position. The Commission should act, because the need for broadband is great and the economic realities facing the nation have the potential to cripple the already limited deployment. Increasing broadband deployment helps all Americans and can contribute to economic growth.

APT concurs with many of the policy solutions offered by commenters such as the National Association of the Deaf, the Texas Public Utilities Commission and others. However, rather than address each proposal here, APT urges the Commission to consider these proposals and others in the context of a rulemaking proceeding.

V. Conclusion

APT offers these suggestions based on its unique perspective drawn from the broad diversity of its membership. APT understands the challenges faced by underserved communities, as it proudly counts as members many groups of these Americans. The Commission must remember that this debate is not about industry preferences for regulation. It is much more vital to find real solutions to problems that continue to plague deployment of advanced services to all Americans. APT respectfully encourages the Commission to adopt policies that reflect the spirit of advanced universal service embodied in Section 706.

¹⁴ See Section 706(a) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

Respectfully submitted,

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